

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #97-26**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Use taxability of yacht [BOAT X]

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

## **FACTS**

[THE TAXPAYER] is a [COUNTRY A - NOT USA] corporation with its principal place of business located in [CITY], [COUNTRY A - NOT USA]. In [MONTH AND YEAR], the taxpayer purchased a [NUMBER] ton yacht (the [BOAT X], hereinafter "the vessel") in [STATE B - NOT TENNESSEE], taking title and possession in that state. No sales tax was collected by the manufacturer from the taxpayer on this sale. Subsequently, the manufacturer paid to [STATE B - NOT TENNESSEE] the [STATE B - NOT TENNESSEE] sales tax applicable to the sale. The vessel was removed from [STATE B - NOT TENNESSEE] and taken to [COUNTRY C - NOT USA]. The taxpayer obtained a Certificate of [COUNTRY A - NOT USA] Registry at [CITY], [COUNTRY A - NOT USA] for the vessel.

U. S. Customs Service has granted the vessel a License to Cruise in the Waters of the

U. S. duty free as a foreign yacht. The vessel entered and exited Tennessee for vacation purposes in [YEAR]. The taxpayer intends to sail to Tennessee for vacation purposes at some time in the future. While in Tennessee the vessel would travel the [NAME] River and would be docked on [NAME] Reservoir. The vessel would remain in Tennessee for a period of thirty (30) to ninety (90) days.

[MR. D] is a citizen of [COUNTRY C - NOT USA] domiciled in [CITY], [COUNTRY C - NOT USA], who maintains a residence in [CITY], Tennessee. He is the president of, and sole stockholder in [THE TAXPAYER].

## **ISSUE**

Does the taxpayer owe Tennessee use tax on the yacht?

## **RULING**

No.

## **ANALYSIS**

In general, when property is imported into the state, use tax is levied upon the use of such property. The tax is levied by T.C.A. § 67-6-210(a), which provides:

On all tangible personal property imported, or caused to be imported from other states or foreign countries, and used by a dealer, the "dealer," as defined in § 67-6-102, shall pay the tax imposed by this chapter on all articles of tangible personal property so imported and used, the same as if

the articles had been sold at retail for use or consumption in this state. For the purposes of this chapter, the use, consumption, or distribution, or storage to be used or consumed in this state of tangible personal property shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein; provided, that there shall be no duplication of the tax in any event.

The definition of “dealer” in T.C.A. § 67-6-102(6), includes

[E]very person ... who ... [i]mports or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state.

It is the declared legislative intent that every sale or use of tangible personal property in Tennessee is subject to the sales or use tax. T.C.A. § 67-6-201.

However, T.C.A. § 67-6-313(a) provides an exception to the application of the use tax, known as the “import for export” provision, as follows:

It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export.

The cases in which the courts have interpreted the import for export exemption require that the goods whose use is to be taxed “come to rest” in Tennessee. *See Texas Gas Transmission Corp. v. Benson*, 223 Tenn. 279, 444 S.W.2d 137 (1969), *Service Merchandise Co. v. Tidwell*, 529 S.W.2d 215 (Tenn. 1975). Case law also indicates a requirement that property become a part of the “mass of property” in Tennessee before being subject to use tax. *See Vector Co. v. Benson*, 491 S.W.2d 612 (Tenn. 1973), *Service Merchandise Co. v. Jackson*, 735 S.W.2d 443 (Tenn. 1987). A temporary presence of such goods is not sufficient to subject the goods to use tax. *See Young Sales Corp. v. Benson*, 224 Tenn. 88, 450 S.W.2d 574 (1970).

In the facts presented in the instant ruling request, the intention that the vessel permanently remain in Tennessee does not appear. Rather, it is intended, from the time the vessel enters the state, that it will not remain in state. The vessel has not come to rest and has not become a part of the mass of property in Tennessee. The “License to Cruise in the Waters of the U. S.,” which is issued by the U. S. Customs Service pursuant to the provisions of 46 USCS Appendix § 104 and Title 19, C.F.R., places restrictions upon what can be done with the vessel. A vessel which has entered the United States under this License cannot transport merchandise or carry passengers for pay. It cannot be offered for sale or charter. The License contains a limitation as to the length of time the vessel can remain. Therefore, it is clear that a vessel which enters the state under a

License to Cruise is not intended to come to rest or to become a part of the mass of property in Tennessee.

The Department is cognizant of the holding in *Cole Bros. Circus v. Huddleston*, 1993 Tenn. App. LEXIS 386, where use tax was imposed on circus equipment used by a traveling circus which was in Tennessee for 29 days during a four-year period. The facts and issues in *Cole Bros.* are distinguishable from those in the instant ruling request. The issue in *Cole Bros.* was one of nexus. Unlike the taxpayer here, *Cole Bros.*' presence in the state was more than transitory in that it had a business purpose for having its property within the state.

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Owen Wheeler  
Tax Counsel 3

APPROVED: \_\_\_\_\_  
Ruth E. Johnson

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